

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

MARCIAN CLARK, )  
                        )  
                        )  
Plaintiff,           )  
                        )  
                        )  
                        )      Case No.  
v.                     )  
                        )  
                        )      Jury Trial Demanded  
SL WESTERN LOUNGE, LLC )  
                        )  
                        )  
and                     )  
                        )  
JOHN DOE,            )  
                        )  
Defendants.          )

**NOTICE OF REMOVAL**

COMES NOW Defendant SL Western Lounge, LLC (hereinafter “Western Lounge”), by and through counsel, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and hereby removes the state action described below to the United States District Court for the Eastern District of Missouri, Eastern Division. As grounds for removal, Western Lounge states the following:

1.       Defendant Western Lounge has been named as the defendant in a civil action brought against it in the Circuit Court of St. Louis City, Twenty-Second Judicial Circuit, State of Missouri captioned *Marcia Clark v. SL Western Lounge, LLC and John Doe*, Case No. 1822-CC00869 filed on June 25, 2018.

2.       Western Lounge was served on June 25, 2018. Therefore, this Notice is filed with the Court within thirty (30) days after service on defendant Western Lounge.

3. Because this Notice of Removal is filed with the Court within thirty (30) days after service on defendant Western Lounge and because this action was commenced less than one year ago, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446.

4. Plaintiff is a resident of and therefore citizen of Illinois for purposes of diversity jurisdiction. (See, plaintiff's Petition at ¶1, Exhibit A.)

5. Western Lounge is a limited liability corporation organized and existing under the laws of the State of Missouri. A limited liability company's citizenship, for purposes of diversity jurisdiction, is the citizenship of each of its members. *E3 Biofuels, LLC v. Biothane, LLC*, 781 F.3d 972, 975 (8th Cir. 2015). All of Western Lounge's members are citizens of Maryland. Therefore, Western Lounge is a citizen of the State of Maryland for purposes of diversity jurisdiction.

6. Plaintiff sued an unknown co-defendant under the fictitious "John Doe." Consequently, under 28 U.S.C. § 1441(b)(1), John Doe's citizenship is disregarded for purposes of determining diversity jurisdiction. Accordingly, complete diversity of citizenship exists because Plaintiff, Marcia Clark, is a citizen of a different state than the sole named defendant, Western Lounge.

7. Upon information and belief, Western Lounge asserts that the allegations in controversy in this action exceed \$75,000, exclusive of interests and costs. This action involves personal injuries claims arising under the theories of negligence, vicarious liability, and negligent hiring. (See Exhibit A). Plaintiff claims that due to the alleged negligence of the defendants, she suffered "substantial injuries" including "past and future medical bills, past and future lost wages, and past and future pain and suffering." (See Exhibit A, ¶13-15.) Pursuant to 28 USC §1446(c)(2)(A)(ii), Western Lounge may assert the amount in controversy because Missouri

state practice either does not permit demand for a specific sum or permits recovery of damages in excess of the amount demanded.

8. Pursuant to 28 U.S.C. §§ 1332(a)(1), this Court has jurisdiction over this matter because the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because the lawsuit is between citizens of different states. As such, there is jurisdiction for the removal of this action from state court to this Court pursuant to 28 U.S.C. §§ 1441 and 1446.

9. Western Lounge is the only properly named and served defendant in this matter. As an unserved fictitious defendant, John Doe's consent to removal is unnecessary. *See* 28 U.S.C. § 1446(b)(A)(2); *K.L. v. State Farm Mut. Auto. Ins. Co.*, 2006 WL 51192, at \*1 (E.D. Mo. Jan. 10, 2006) ("[e]ach defendant must join or consent within thirty days of service on that defendant."); *see also Bowen v. Home Depot*, 2001 WL 920263, at \*1 (E.D.N.Y. Aug. 1, 2001) ("the requirement of unanimity does not extend to unserved (let alone unidentified) defendants").

10. Pursuant to 28 U.S.C. §1441(a) and 28 U.S.C. §1446(a), venue for this action is proper in this Court. The State Court action is pending in the district and division embracing this Court.

11. In accordance with 28 U.S.C. §§ 1446(a), a copy of all process, pleadings, and orders served upon defendant have been attached as Exhibit B.

12. Pursuant to 28 U.S.C. §§ 1446(d), this Notice of Removal will be served upon all adverse parties and will be filed promptly in the State Court Action.

13. A copy of the Civil Cover Sheet is attached as Exhibit C.

14. By this Notice of Removal, Western Lounge does not waive any objections it may have as to jurisdiction, venue, or any other defenses or objections that it may have to this action.

Western Lounge intends no admission of facts, law or liability by this Notice, and expressly reserves all defenses and/or motions.

WHEREFORE, Defendant SL Western Lounge, LLC hereby gives notice of the removal of this action from the Circuit Court of St. Louis City, Twenty-Second Judicial Circuit, State of Missouri to the United States District Court for Eastern District of Missouri, Eastern Division.

Respectfully submitted,

**FOLAND, WICKENS, ROPER,  
HOFER & CRAWFORD, P.C.**

/s/Michael L. Belancio

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**ATTORNEY FOR DEFENDANT**  
**SL WESTERN LOUNGE, LLC**

**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2018, I served a true and correct copy of the foregoing upon the following by email and electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

Joseph A. Ott  
Ott Law Firm  
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**ATTORNEY FOR PLAINTIFF**

/s/Michael L. Belancio

**ATTORNEYS FOR DEFENDANT**